



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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WINDHOEK - 11 August 2006

No. 3676

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General Notice

NAMIBIAN COMMUNICATIONS COMMISSION

No. 234 2006

GRANTING OF A TELECOMMUNICATIONS LICENCE

In terms of section 22B(10) of the Namibian Communications Commission Act, 1992 (Act No. 4 of 1992), the Namibian Communications Commission hereby indicates that the Telecommunications licence set out below has been granted to PowerCom (Pty) Ltd in terms of section 22A(1) of the said Act, because the said Company was the only person who submitted a tender that complied with the requirements set out in the documents requesting tenders for the licence concerned.

D. IMBILI
CHAIRPERSON OF THE NAMIBIAN
COMMUNICATIONS COMMISSION

Windhoek, 28 July 2006

NATIONAL CELLULAR TELECOMMUNICATIONS LICENCE

DEFINITIONS

In this Licence, unless the context indicates otherwise -

“**Authority**” means the Namibian Communications Commission;

“cellular” means radio telecommunications designed to use limited radio frequency spectrum between cellular Terminal Equipment and network transceivers for the provision of digital bearer, tele- and supplementary services across the cellular network, by allocating a limited number of frequencies within each of a number of defined geographical areas or cells, allowing the re-use of the same frequencies in different non-adjacent cells, and enabling users to maintain connections whilst moving through different geographical areas by making use of call handover between adjacent cells;

“Commencement Date” means the date from which the Licensee first offers commercial services;

“Customer” means any person who –

- (a) has indicated willingness in writing to enter into a contract with the Licensee for the provision of the Service by means of the Licensed Lines on the Licensee’s terms and conditions lodged in accordance with this Licence, or has either written or otherwise entered into, and is not in breach of, such a contract; or
- (b) is a customer of a Service Provider;

“Disaster” also includes any event or circumstance resulting from a major accident, natural phenomena, and incidents involving toxic and radio active materials;

“Emergency” means an emergency of any kind, including, without limitation, any circumstance resulting from a major accident or disaster;

“Emergency Organisation” means in respect of any locality the relevant police, fire and ambulance services and sea rescue institutes;

“ETSI” means European Telecommunications Standards Institute;

“Fixed Link” means a telecommunications line connecting two points neither of which is Terminal Equipment;

“Grade of Service” means the blocking probability during Busy Hours measured between any two connection points within the Network including, without limitation, access lines, Fixed Lines and Leased Lines;

“GSM” means Global System for Mobile communications conforming to the full family of GSM specifications and standards as defined by ETSI or such other standards and specifications as approved by the Authority as applicable to the frequency spectrum bands allocated by the Authority from time to time;

“Interconnection Agreement” means the agreement to be concluded between the Licensee and any person licensed to provide public telecommunications services or networks defining the commercial and technical arrangements for -

- (a) the transfer of messages in either direction between the Licensee and one or more similarly licensed persons operating or managing a cellular mobile, other wireless or fixed networks; and
- (b) the use of Leased Lines; and
- (c) the provision of related services; and

(d) the payment of Interconnect Fees;

“Interconnect Fees and Charges” means the fees and leasing charges payable by one party to the other in terms of an Interconnection Agreement for the carriage of telecommunication traffic associated with all telecommunication services that originate in one telecommunication system and that are carried on another telecommunication system or on Leased Lines;

“ITU” means the International Telecommunication Union;

“ITU-T” means the ITU Telecommunication Standardization Sector;

“Leased Line” means a dedicated point-to-point circuit, complying with ITU-T and ITU-R recommendations, leased from Telecom or similarly licensed persons for the purpose of carrying telecommunications traffic;

“Licence” means the authorisation herein granted by the Namibian Communications Commission;

“Licensed Line” means a telecommunications line or any part thereof which the Licensee is authorised to construct, maintain and use in terms of this Licence;

“Licensee” means PowerCom (Pty) Ltd, a company duly registered and incorporated according to the company laws of the Republic;

“Master Frequency Plan” means the manifestations of the actions of the Authority to exercise control over and manage the radio frequency spectrum in accordance with accepted international standards and subject to the provisions of national legislation concerning radio-communications;

“Message” means any sound, signal, sign or image sent, or to be sent, for conveyance by means of the licensed Service;

“Minister” means the Minister of Information and Broadcasting, or the Minister of Works, Transport and Communications, as required by the context;

“Namibia” means the geographical area of the Republic of Namibia;

“Number Portability” means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability or convenience when switching from one carrier to another;

“Operator” means any of Telecom, the Licensee and any similarly licensed person;

“Person” means any individual, company, corporation, partnership, joint venture, consortium, government or governmental entity;

“PLMN” means Public Land Mobile Network;

“prescribed” means prescribed by regulation;

“PSTS” means public switched telecommunication service;

“PSTN” means public switched telecommunications network;

“Public Telecommunications Network Provider” means any person licensed to operate, provide and/or manage a telecommunications network to a customer;

“Public Telecommunications Service Provider” means any person licensed to offer, provide and/or manage a telecommunications service to a customer;

“Republic” means the Republic of Namibia;

“Resident” means a person who is considered to be domiciled or ordinarily in residence within the Republic of Namibia;

“Service” means a service consisting of -

- (a) the provision of any Licensed Line;
- (b) the conveyance of any message by means of such Line;
- (c) the provision of any voice, directory, voice mail, data, GSM or 3G bearer, tele- and supplementary services, or information service provided by those means; or
- (d) the access to Emergency Organisations by those means;

together with any billing, data processing or other operation which is necessary to provide that service whether or not the Licensee charges a separate fee for it;

“Radio Licence Fee” means an amount payable for the permission to use the allocated frequencies within the radio spectrum, subject to the terms and conditions of the Licensee’s Licence and applicable radio-communications legislation and standards;

“Service Provider” means any person who is in the business of providing the Service to another and who has a contract with the Licensee for such purpose, but excludes a Mobile Virtual Network Operator (MVNO);

“Telecommunications Licence” means a Licence to provide telecommunication services issued to the Licensee;

“Telecom” means Telecom Namibia Limited;

“Terminal Equipment” means a terminal connected via a cellular radio link which may be used by an end user to send and/or receive messages which are to be or have been conveyed by means of the PLMN all of which are duly licensed by the Authority;

“Third Generation” or **“3G”** means the family of cellular mobile specifications and standards also referred to as UMTS or IT-2000, as defined by the ITU or such other standards and specifications as approved by the Authority as applicable to the frequency spectrum bands allocated by the Authority from time to time.

PART ONE - LICENCE

1. GRANT OF LICENCE

1.1 In accordance with the telecommunications law and regulations of the Republic, and upon and subject to the terms and conditions set out herein, the Authority hereby grants the Licensee the right to:

- a) provide nationwide a GSM and 3G cellular mobile radio telephony Service operating in the frequency bands allocated for the use of the Licensee,
 - b) connect fixed and mobile Terminal Equipment using cellular radio telephony technology for the provision of a Service, and
 - c) interconnect with the PSTN network or with the PLMN of any similarly licensed persons.
- 1.2 The Licensee is required to obtain permission from the Authority for the installation and use of own fixed-links.
- 1.3 All international calls originating within or destined for the cellular network shall be routed via the Telecom international exchange(s), until such point that Telecom no longer holds such a monopoly or unless authorised by the Authority.
- 1.4 The rights cited in 1.1 may be exercised partially through agents, contractors or Service Providers of the Licensee. The Licensee shall be responsible for their acts or omissions in respect thereof on the basis that -
- a) the liability of the Licensee for any acts or omissions of any Service Provider in relation to the exercise of such rights, shall be limited to acts or omissions which constitute a contravention of the conditions of this Licence;
 - b) the Licensee shall stipulate adequate provisions in its contracts with its agents, contractors and Service Providers to ensure that their exercise of any of the above rights do not contravene any of the conditions of this Licence;
 - c) should an agent, contractor or Service Provider of the Licensee commit any act or omission in contravention of a condition of this Licence, the Licensee shall upon becoming aware thereof act as expeditiously as is reasonably possible to remedy such contravention and the Licensee shall be afforded reasonable time for such purposes; and
 - d) the Authority shall upon becoming aware of any contravention of Licence conditions by agents, contractors or Service Providers of the Licensee or any complaints lodged with the Authority in relation thereto forthwith in writing notify the Licensee accordingly.
- 1.5 Nothing in this Licence shall be construed or understood as to relieve the Licensee or any other party of the obligations to comply with any other applicable statutory prohibition or obligation and in particular the obligation to comply with the provisions of the legislation concerning radio-communications.
- 1.6 Nothing in this Licence shall be deemed to over-ride any law or applicable regulation in force in the Republic.
- 1.7 The Licence shall not be transferable unless approval of the Authority has been obtained and then only on such conditions as it may prescribe, including any payment of a fee.
- 1.8 The validity and legally binding contents of the Licence shall continue, without the need of amendment, in the event of a change in Authority or law empowering such an Authority to issue, grant, over-see or otherwise regulate, amend, charge or receive payment from the Licensee.

2. COMMENCEMENT AND PERIOD OF LICENCE

- 2.1 The Licence does not authorise the use of any Licensed Line until:
- a) the Licence has been issued or prior to any date restricting the commencement of the Licence;
 - b) after the fees specified in this Licence together with the applicable Radio Licence Fees have been paid.
- 2.2 The Licensee shall be entitled from the date of the Licence to undertake testing of its Licensed Lines prior to offering services (“Commencement Date”).
- 2.3 The Licensee shall be entitled to offer services on a commercial basis from the date of the issue of the Licence, or the date expressly authorising the commencement of commercial offerings of services, or the fulfilment of any obligations whose conditions expressly prohibit or restrict the commencement of offering commercial services prior to meeting the obligations, as applicable.
- 2.4 Subject to the conditions of this Licence and other instrument applicable either to this Licence or to the operations of the Licensee the initial validity period of this Licence shall be 15 years from the date on which the Licence was issued provided that either party may terminate this Licence upon 5 (five) years written notice to the other, provided further that no such notice may be given to the effect that the Licence is terminated earlier than 15 (fifteen) years after the date on which the Licence was issued.
- 2.5 Should no notice of termination be given in terms of this section, this Licence shall automatically be renewed on the same terms and conditions, except that either party may terminate the Licence upon 5 years written notice at any time thereafter, unless the Authority and the Licensee agree in writing on any new or amended terms and conditions.

3. LICENCE PARITY

- 3.1 To the extent required to ensure fair competition, all future GSM and 3G Public Mobile Cellular Licences issued by the Authority will contain terms and conditions equivalent, subject to market conditions, to those applicable to the Licensee and in accordance with the telecommunications laws and regulations of Namibia.

PART TWO - FEES

4. LICENCE FEES

- 4.1 In consideration for the granting to the Licensee of the rights to construct, maintain and use Licensed Lines, the Licensee shall pay to the Authority:
- a) Licence Award Fee

N\$ 2,500,000 (two million five hundred thousand Namibia Dollars) is payable within 30 days of the date of issue of the Licence; N\$ 2,500,000 (two million five hundred thousand Namibia Dollars) is payable on the Commencement Date or on the first anniversary date of the issue of the Licence, whichever comes first; and N\$ 60,293,112 (sixty million two hundred ninety three thousand one hundred and twelve Namibia Dollars) is payable by or on the first anniversary date of the issue of the Licence.

b) Annual Licence Fee

An annual fee for the Licence is payable each year. This fee is independent of any payments due resulting from 4.1 (a) above. The payment system follows that:

- i) on the first anniversary date of the issue of the Licence N\$ 500,000 (five hundred thousand Namibia Dollars) shall be paid by the Licensee;
- ii) on the second anniversary date of the issue of the Licence N\$ 750,000 (seven hundred and fifty thousand Namibia Dollars) shall be paid by the Licensee;
- iii) on the first day of January following the second anniversary date of the issue of the Licence, N\$ 80,000 (eighty thousand Namibia Dollars) for each month or part thereof from the due date of the payment indicated in 4.1(b)(ii) to the due date of the payment indicated in 4.1(b)(iii); and
- iv) on the first day of January of every year thereafter, unless amended by the Authority, N\$ 1,000,000 (one million Namibia Dollars) and 1.5 per cent (one and one half of one per cent) of the turnover shall be paid by the Licensee.

c) Radio Licence Fee

A Radio Licence Fee for the Spectrum Usage will be payable by the Licensee under prescribed terms and conditions.

4.2 The Licence Fees as set out above shall be inclusive of any sales taxes or taxes on such Licence Fees.

PART THREE - GENERAL LICENCE CONDITIONS

5. RESTRICTION ON OWNERSHIP, TRANSFER OF SHARES, DIRECTORSHIPS, ETC.

5.1 The following restrictions on ownership shall apply:

- a) The Licence shall not be held by any person licensed to operate or manage a Public Land Mobile Network in the Republic or offer cellular mobile services in the Republic or by a Holding Company who, at the time of the issuance of this Licence, directly or indirectly controls a person who is licensed to operate or manage a Public Land Mobile Network in the Republic or offer cellular mobile services in the Republic.
- b) The Licence shall not be held by any person licensed to operate or manage a Public Telecommunications Network in the Republic or offer Public Telecommunications Services in the Republic who is directly or indirectly controlled by any such Holding Company as cited in 5.1(a).
- c) No breach of this license condition will result from the ownership, directly or indirectly by any such Person cited in 5.1(a) or (b), of less than (10%) of the publicly available shares of the Licensee.

- 5.2 The Licensee shall not transfer the Licence without the prior written consent of the Authority.
- 5.3 Any transfer of shares which would result in the direct or indirect ownership of 20% (twenty per cent) of the issued voting share capital of the Licensee changing hands or a change in the ownership of the issued voting share capital that results in a change to the composition of one-fifth of the Board of Directors, shall require prior written approval of the Authority.
- 5.4 The provisions of this section shall not preclude the shares of the Licensee from being listed on the Namibian Stock Exchange, provided that such listing shall not have the effect of vesting greater than 49% (forty-nine per cent) of the issued voting share capital of the Licensee in -
- a) any non-Resident of the Republic of Namibia,
 - b) a manufacturer or supplier of telecommunications equipment.
- 5.5 The position of Chairman of the Board of Directors must be held by Namibian citizens who are also Resident in the Republic by the third anniversary date of the issue of the Licence and thereafter.

6. ACCOUNTS

- 6.1 The Licensee shall maintain proper accounting records in a form which is sufficient to show and explain its transactions and in this connection will maintain such records to fairly represent the costs, revenue and financial position of the Licensee's business.
- 6.2 The Licensee shall present to the Authority audited annual financial statements prepared in accordance with generally accepted accounting practice and as approved by the Licensee.
- 6.3 The Authority may, from time to time as determined necessary by the Authority, request the Licensee for an independent audit of accounting records and other documents relevant to assessing the licence fee payable by the Licensee.
- a) The independent auditor shall be mutually agreed upon by the Licensee and the Authority.
 - b) The costs of the audit shall be shared equally between the Licensee and the Authority.

7. REPORTING

- 7.1 The Licensee shall report in writing to the Authority on or within 30 days of each financial quarter.
- 7.2 Each report shall include details of its Service provided in terms of this Licence and in particular its progress in achieving its commitments provided for in sections 11 and 12.
- 7.3 Each report shall include maps and other details indicating the coverage of the operational cellular network of the Licensee on the date of the report.

- 7.4 Each report shall include maps and other details indicating additional or revised areas of coverage proposed by the Licensee.

8. ACCESS TO INSPECTORS

- 8.1 The Licensee shall grant unhindered access to all its facilities, installations and records to all officers authorised as inspectors by the Authority for such purposes.
- 8.2 The Licensee shall provide details of its facilities, installations and networks in such format and at such times as may reasonably be requested by the Authority from time to time.

PART FOUR - SPECIFIC LICENCE CONDITIONS

9. FREQUENCIES

- 9.1 The Authority shall assign for the duration of the Licence such GSM and 3G frequencies as allocated by the Authority and applied for by the Licensee in accordance with the Frequency Band Plan as amended from time to time by the Authority to conform with nationally accepted standards, provided that the Licensee continues to comply with the provisions of its Radio Licence and to use such frequencies efficiently in accordance with GSM and 3G recommendations for the purpose of providing its Service.
- 9.2 The Licensee shall only be entitled to utilise an assigned frequency after the issue by the Authority of a valid Radio Licence covering such frequency.
- 9.3 Nothing in this paragraph shall prevent the Authority substituting a different frequency in the GSM and 3G frequency bands allocated to the Licensee for any of the frequencies so assigned at no cost to the Authority if this is reasonably necessary -
- a) for the implementation of any international agreement entered into by the Government of the Republic of Namibia; or
 - b) to ensure the proper management of the radio spectrum; or
 - c) for the avoidance of harmful interference.
- 9.4 The Authority will give as much notice as is reasonably practicable and, before taking any such action, it will consult the Licensee and will take into account, so far as it considers reasonable, the representations and objections of the Licensee and provide a written report incorporating the reasons for its findings.

10. NUMBERING

- 10.1 The Licensee shall be issued with a short-code for the provision of the Service and/or any such prefix as may subsequently be allocated to the Licensee by the Authority in terms of the laws and regulations of the Republic and shall manage its numbering in accordance with such regulations as may be applicable from time to time.
- 10.2 The Licensee shall not use any short code or number from the Republic's numbering Scheme for the purpose of terminating telecommunications messages on any Public Telecommunications Network within the Republic unless that short code and number shall have been allocated to the Licensee by the Authority for that purpose.

- 10.3 Insofar as any short code or number from the Republic's numbering scheme, which is allocated to the Licensee by the Authority, is used for terminating telecommunications messages, the Licensee shall use the same for terminating telecommunications messages solely on a Public Telecommunications Network in the Republic.
- 10.4 No Licensee shall acquire any proprietary rights in any short code or codes, number or range of numbers allocated to it or used by its customers. No short code or codes, number or range of numbers may be sold or otherwise transferred by the Licensee without the prior written consent of the Authority or within the processes and requirements of any lawfully implemented Number Portability scheme.
- 10.5 The Licensee shall manage any short codes and numbers allocated to it:
- a) with a view to conserving short codes and numbers as a public resource; and
 - b) in conformity with the Republic's numbering scheme and any other numbering plans or conventions or directions issued by the Authority from time to time.
- 10.6 The Licensee shall maintain a record of the status of all short codes and numbers allocated to it by the Authority and shall, on request, make that information available to the Authority. The Licensee shall ensure that the allocation of individual short codes, numbers or number ranges by the Licensee to its customers is carried out in an objective, transparent, non-discriminatory and timely manner.
- 10.7 The Licensee shall make any changes in any equipment, facilities or processes required in order to continue to comply with the Republic's numbering scheme and any other numbering plans or conventions or directions issued by the Director from time to time. The Authority may change the short codes and/or numbers allocated to the Licensee at any time. The Licensee shall comply with any direction of the Director in relation to the implementation of short codes or number changes and informing its customers of such changes.
- 10.8 The Authority may reclaim any short code or codes, numbers or numbering ranges allocated to the Licensee if, in the opinion of the Authority, the Licensee is found to be in breach of any Condition, including specific numbering conditions.
- 10.9 The Licensee shall not charge its customers for allocations of short codes or numbers except where authorised and in accordance with any direction from the Authority.
- 10.10 The Licensee shall not reallocate to another customer a subscriber number previously allocated to a customer before the expiration of a period specified by the Authority in the Republic's numbering scheme and any other numbering plans or conventions or directions issued by the Authority from time to time, from the date of the termination of the contract with that customer in respect of that number and unless the Licensee has ascertained that the customer has not continued the use of that number for the purpose of another mobile telephony service within the Republic.

11. NETWORK ROLL-OUT, CONNECTIONS AND COVERAGE OBLIGATIONS

- 11.1 The Licensee shall undertake an implementation programme in accordance with an Implementation Timetable as agreed to between the Licensee and the Authority and as lodged with the Authority.

11.2 The Licensee shall meet the network roll-out plan and provide the coverage as agreed upon between the Licensee and the Authority. The terms and conditions of such an agreement or agreements shall become, or interpreted to be, an integral part of this Licence, and shall ensure –

- a) the minimum coverage shall be achieved within a period of five (5) years from the date of issue of the Licence, and
- b) the full coverage agreed upon between the Licensee and the Authority shall be completed within a period of ten (10) years from the date of issue of the Licence.

11.3 In order to provide enhanced mobile services for PABX extensions, and subject to the approval of the NCC, the Licensee shall be allowed to connect a PABX to its PLMN provided that such PABX is already connected and remains connected to the fixed public switched telephone network. PLMN connections to a PABX that is later disconnected from a fixed PSTN may continue provided –

- a) the PLMN operator or service provider was not involved directly or indirectly in the decision to disconnect, or the physical or technical process in making the disconnection, and
- b) the Authority is informed of the circumstances and if it would, under the circumstances, be unreasonable for the Authority to require the PLMN to be disconnected.

11.4 Quality of Service

The Licensee shall meet the following performance targets:

- a) Network availability

The Licensee shall ensure that the Network is available end to end 24 (twenty four) hours per day, 7 (seven) days per week, at least 95 (ninety five) per cent of the time averaged over 90 (ninety-per cent) of the Network from the Commercial Date. The Licensee's obligation in respect of network availability subsequent to the first 24 (twenty four) months of the Licence Period shall be determined by the Authority in terms of the Act and such regulations as may be applicable from time to time.

- b) Call completion rate

The Licensee shall maintain a Busy Hour call completion rate of at least 95 (ninety five) per cent on the Network averaged over each of two consecutive 12 (twelve) month periods, the first of which shall commence on the Commercial Date. The Licensee's obligation in respect of the call completion rate subsequent to the first 24 (twenty four) months of the Licence Period shall be determined by the Authority in terms of the Act and such regulations as may be applicable from time to time.

- c) Grade of Service

The Licensee shall use its best endeavours to achieve a Grade of Service of at least 3 (three) per cent across all its Licensed Lines.

d) Call quality

The Network must provide at least the nominal call quality to classes of Customer units in accordance with the Technical Standards established in agreement with the Authority.

e) Quality of service tests

i) The Licensee shall, at its own cost and on an annual basis, submit to the Authority independently audited reports on the quality of service offered by it in terms of this Licence.

ii) The reports referred to under 11.2 shall be submitted to the Authority no later than 6 (six) months after the Financial Year end, provided that the Licensee shall not be required to submit any such report during the first 18 (eighteen) months of the Licence Period.

iii) The Authority may, at reasonable intervals, conduct audits at the Licensee's cost in order to verify the validity of the audit reports submitted by the Licensee to the Authority.

f) Network monitoring

The Network shall be monitored by a Network Management Centre or Centres 24 (twenty four) hours per day, 7 (seven) days per week, every day of the year.

12. COMMUNITY SERVICE AND UNIVERSAL SERVICE OBLIGATIONS

12.1 The Licensee shall undertake to provide community telecommunications services or other universal services by means of its Service;

a) as may be agreed to between the Licensee and the Authority and subject to the conditions of such agreement; or

b) where decreed by law or regulation.

12.2 The fees and tariffs charged, if any, for such services and any changes thereof will be agreed upon between the Licensee and the Authority.

12.3 A review date of fees and tariffs must also be agreed upon between the Licensee and the Authority. This date does not disallow any option to proposed changes to tariffs and fees prior to the agreed date.

13. DIRECTORY INFORMATION

13.1 The Licensee shall provide directory assistance services (including, at least, name and telephone number) to its Customers. This directory assistance service shall include information concerning the Licensee's Customers and, based on the information available to the Licensee, the Customers of other Public Telecommunications Service Providers in the Republic.

13.2 The Licensee shall cooperate with other Public Telecommunications Service Providers in the Republic so that they may have convenient access to information concerning the Licensee's Customers for inclusion as party of their own directory assistance

services. The Licensee shall use any such customer information obtained from other Public Telecommunications Service Providers only for the purpose of offering directory services and for no other purpose.

- 13.3 The Licensee shall not be required to disclose Customer information to a competitor or to otherwise cooperate in the provision of directory services with that competitor in accordance unless equivalent obligations are also imposed on that competitor.
- 13.4 In order to enable the Licensee and similarly licensed persons to give effect to obligations in respect of directory enquiries and printed directories, the Licensee shall forward to the person nominated by the Authority such directory information and on such conditions as prescribed by the Authority from time to time.

14. EMERGENCY SERVICES OBLIGATION

- 14.1 The Licensee shall provide by means of its Licensed Lines such facilities as would enable a caller free of charge to communicate in the event of an emergency in the area serviced by the Licensee with an Emergency Organisation.

15. PERFORMANCE SPECIFICATIONS

- 15.1 The Licensed Lines installed, maintained and used by the Licensee shall throughout the term of the Licence conform to such GSM and 3G specifications and standards and ITU-T recommendations as prescribed by the Authority.
- 15.2 The Licensee shall at all times fully comply with the recommendations of the International Telecommunication Union and its associated organisations as they apply to the Republic of Namibia from time to time.
- 15.3 The Licensee shall introduce measures and at all times use its resources to ensure that apparatus in the Licensed Lines including Terminal Equipment operated by the Licensee shall comply with
- (a) the requirements for Electro Magnetic Compatibility; and
 - (b) the requirements for network interface,
- both as prescribed by the Authority in accordance with international specifications and standards.
- 15.4 If requested by a customer the Licensee or its Service Provider shall provide such customer with a personalised account which shall contain at least the following level of detail: name, address, telephone number, account number, itemised billing number, number called, time of call, call duration and call charge.
- 15.5 The Licensee shall not knowingly provide Services to customers other than by means of Terminal Equipment.

PART FIVE - RELATIONS WITH CUSTOMERS

16. CUSTOMER SERVICE STANDARDS

- 16.1 The Licensee must develop, publish and enforce guidelines for use by its personnel when handling enquiries and complaints from a customer to whom it supplies telecommunications facilities and provide similarly in its contracts with Service Providers.

- 16.2 The guidelines relating to enquiries and complaints are to be published and be available to customers at the commencement of Service to such customer.
- 16.3 The guidelines are to address the following areas of the provision of customer services:

- (a) The Licensees procedures for the handling of customers' complaints;
- (b) the time frame for handling complaints through this procedure;
- (c) further recourse available to a customer who is dissatisfied with the Licensee's complaints handling procedure;
- (d) procedures adopted by the Licensee to check the accuracy of a customer's telephone account;

procedures to be adopted by the Licensee to assist customers in disaster situations.

- 16.4 A Licensee must keep and maintain statistics on complaints made to the Licensee by customers with which the Licensee deals in accordance with the guidelines. The Licensee shall submit such statistics to the Authority if requested to do so by the Authority.

17. CUSTOMER PRIVACY

- 17.1 The Licensee shall use all reasonable endeavours to ensure that information obtained or received in the performance of the Service by itself or its Service Providers is kept confidential, not disclosed or made accessible to third parties or used otherwise than for the purposes or furtherance of the Service.
- 17.2 The Licensee shall not directly or indirectly communicate any information about a customer otherwise than in the normal course or conduct of the business of the Licensee to any other business of the Licensee or any other person engaged in the supply of apparatus.

18. TARIFFS AND FEES

- 18.1 The Licensee shall not charge any tariffs or fees for the Service and any other services whatsoever until such tariffs and fees have been lodged in writing with the Authority.
- 18.2 The base tariffs and fees which the Licensee may apply from the Commercial Date shall be lodged with the Authority at least 3 (three) weeks prior to the Commercial Date.
- 18.3 Where the Authority has approved an increase in tariffs and fees, these increased tariffs and fees shall constitute the new base tariffs and fees.
- 18.4 The notice of tariffs and fees lodged with the Authority must state the period (i.e. the term) for which it is to be in force. The term must not begin before the period specified by the Authority or telecommunications law or regulations after the notice has been lodged with the Authority. In relation to each kind of service that the Licensee proposes to offer during the term, the notice must set out -
- a) a description of the service; and

- b) details of the nature and amounts of charges payable for the service.
- 18.5 If the charges in a tariff plan vary, in their nature, in their amounts or both, the notice must set out, why and how the charges vary.
- 18.6 The notice must be precise and detailed enough to be used to work out the nature and amounts of charges payable for the supply of Service in particular cases.
- 18.7 The Licensee shall publish details of its tariffs and fees and any other terms and conditions on which its services are provided by -
- a) making them available for inspection at its major places of business during normal business hours, and
 - b) sending the appropriate parts thereof to any person who may request same.
- 18.8 The Authority shall give written notice by the seventh (7th) day in the event of non-approval of the tariffs and fees. If no notice is given by the end of the seventh (7th) day from lodging the proposed tariffs and fees, the Authority shall be deemed to have approved such tariffs and fees.
- 18.9 If the Authority disallows or delays the new tariffs and fees, it shall provide written reasons for its decision to the Licensee within seven (7) days of the date of its decision.
- 18.10 The Authority reserves the right to request, at any time, details about the tariffs or fees for the Service and any other services offered, and with written reasons and justification, may order an amendment to the tariffs, fees or services.
- 18.11 The conditions and time periods under 18 may be amended by Regulation in which the new conditions and time periods must be prescribed.

PART SIX - RELATIONS WITH OTHER OPERATORS

19. ANTI-COMPETITIVE PRACTICES

- 19.1 The Licensee and its agents, contractors and Service Providers shall not show any undue preference to, or exercise undue discrimination against any person or class or description of persons in respect of the provision of any Service or in respect of the construction or maintenance of the Licensed Lines.
- 19.2 The Licensee will not alone or together with others, engage in or continue or knowingly acquiesce in any anti-competitive practices and, in particular, the Licensee shall:
- a) not engage in any anti-competitive cross-subsidisation;
 - b) not engage in the abuse of its dominant position, if any;
 - c) not enter into any exclusive arrangements with third parties for the location of its facilities that are acquired to provide the Service;
 - d) not enter into any agreements, arrangements or undertakings with any Person, including any supplier of services that compete with the Service which have as their objective or effect the fixing of prices or any other restraint on competition;

- e) not engage in any anti-competitive tied or linked sales practices, provided that the Licensee may bundle services so long as the bundled services are also available separately;
- f) not use information obtained from competitors if the object or effect of such use is anti-competitive; and
- g) The Licensee shall cooperate with other Licensees in order to facilitate the provision of public telecommunications services.

19.3 The Licensee shall include a provision in its contracts with its Service Providers requiring that they comply with a code of practice for consumer affairs to be established by the Licensee at least containing -

- a) guidance to their customers in respect of disputes or complaints relating to the provision of the Service by them;
- b) advice to such customers on charging and billing and concerning such enquiries;
- c) advice and procedures on the proper use of the Service by such customers; and
- d) standards of conduct expected in the provision of the Service by Service Providers to their customers.

19.4 Notwithstanding the provisions of paragraph 19.1, the Licensee may provide the Service to a customer or Service Provider on charges, terms and conditions which are preferential if -

- a) the charge in question is in accordance with a tariff plan which has previously been lodged as required; or
- b) the Service is provided as a Community Service and any Universal Service requirement in terms of an agreement with the Authority; and
- c) the terms and conditions have been duly lodged.

19.5 The Licensee shall lodge with the Authority sample copies of all contracts relating to the Service or the provision of the Service entered into between the Licensee and any customer and Service Provider.

20. INTERCONNECTION

20.1 The Licensee shall be obliged to enter into an Interconnection Agreement. The Licensee shall agree to:

- a) provide interconnection at any technically feasible point in the network, subject to operational practicability and commercial viability;
- b) provide interconnection under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services provided to other affiliated or non-affiliated service providers;

- c) provide interconnection in a timely fashion on terms, conditions (including technical standards and specifications) and cost based rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the interconnecting party does not pay for network components or facilities that it does not require for the service to be provided, it being understood that no unreasonable and unrecoverable costs will be imposed on the Licensee in connection with any unbundling;
- d) lease to such other service providers, on a non-discriminatory basis, facilities (rooms, towers, ducts, cable etc.) under the control of the Licensee and required for use by such others, it being understood that the Licensee shall not be required to construct new facilities for lease to such other service providers hereunder;
- e) allow access to such facilities by such other Licence holders, upon request, for the purposes of installation, maintenance and repair;
- f) provide reasonable notice to such other Licence holders about any network design, roll-out or upgrade plans or changes which may be expected to affect the arrangements between the parties;
- g) take steps to protect such other Licence holders' systems from interference or other harm caused by the facilities and equipment used by the Licensee; and
- h) not enter into any arrangements for access to any Service or facility that would preclude the operator of that Service or facility or another Licence holder from entering into similar arrangements with the operator of that Service or facility.

20.2 The procedures applicable for interconnection to the Licensee's network shall be made publicly available.

20.3 The Licensee will make publicly available either its interconnection agreements or reference interconnection offers.

20.4 The Licensee shall be entitled to require, as a condition of entering into any interconnection agreement, that:

- a) current generally accepted international engineering principles and practices in the telecommunications sector are adhered to in the provision of any interconnection services;
- b) due account is taken of the needs of the Licensee's Customers and the needs of other Public Telecommunications Service or Network Providers, both current and future, that have made or make requests to interconnect with the Licensee's network;
- c) it is not required to interconnect its network if doing so would unreasonably risk causing damage to the Licensee's property, or the death of, or personal injury to, any person employed or engaged in the Licensee's business.

20.5 If the Licensee is unable to reach agreement with another Public Telecommunications Service or Network Provider on the terms and conditions of interconnection or other arrangements within one month (unless the period is otherwise specified by

law or regulation which shall be the overriding date) after the first request in writing for interconnection by either party, the Licensee may, by notice in writing, request that Authority adjudicate between them. The Authority's decision on all matters in dispute shall be binding on both parties.

- 20.6 Should the Authority have to determine the terms and conditions of any Interconnection Agreement required, such terms and conditions shall be no less favourable than those for any similarly licensed person and the Licensee shall comply with such terms and conditions as so determined as if they constituted an agreement entered into by the Licensee.
- 20.7 The fees and tariffs payable for fixed or mobile network services in any Interconnection Agreement shall be reasonable and determined by forward-looking incremental costing.
- 20.8 The fees and tariffs payable for fixed or mobile network services by the Licensee in terms of any Interconnection Agreement entered into by the Licensee shall be lodged with the Authority.
- 20.9 All interconnection or other agreements between the Licensee and any other Person licensed or otherwise permitted to provide public or private telecommunications Licensed Services in the Republic of Namibia shall be filed for approval with the Authority. The Licensee shall not give effect to any such agreement until it has been approved by the Authority. If the Authority does not disapprove the agreement and charges or order modifications within 90 (ninety) days from the date the Agreement is submitted, the Agreement will be effective on an interim basis until 120 (one hundred and twenty) days from the date the Agreement was submitted, by which time Authority must issue its decision.
- 20.10 International interconnection agreements between the Licensee and a carrier authorised by a foreign country must be approved by the Authority within 90 (ninety) days from the date of submission of the Agreement to the Authority.

21. ROAMING

- 21.1 The Licensee shall provide international roaming services to the extent, and on such commercial terms and conditions, as may be agreed upon with foreign national operators.
- 21.2 The Licensee may provide domestic roaming services to the extent, and on such commercial terms and conditions, as may be agreed upon with other licensed Public Mobile Cellular operators, providing such services are not used to replace network installation and coverage requirements and all service requirements are met.

22. FACILITIES AND SITE SHARING

- 22.1 The Licensee shall locate the Mobile Switching Centre (MSC) and all infrastructure components required for the operation of the second mobile cellular network within the territory of the Republic of Namibia. This clause shall be interpreted to include the billing system and related Information Technology platforms for the daily functioning of the network and provision of services. The Licensee shall further ensure all critical network elements are located in a secure environment.
- 22.2 The Licensee may, subject and in adherence to the telecommunications laws and regulations of the Republic, share facilities including ducts, masts and poles and

sites to the extent, and on such commercial terms and conditions, as may be negotiated and agreed upon in good faith with other licensed and competing fixed-, cellular or other wireless network operators, providing such sharing does not include or replace the independent provision, maintenance and operation of the Licensee's network.

- 22.3 The Licensee shall not obstruct, interfere or prevent access to sites or facilities by other operator(s) with which the Licensee has a sharing agreement, providing the access by the other operator is to its own facilities or equipment.

23. SERVICE PROVIDERS

- 23.1 The Licensee shall have full discretion to determine and implement the appropriate means of marketing and distribution of its Services inclusive of the appointment and the termination thereof of agents and Service Providers.

PART SEVEN - LICENCE AMENDMENT, TERMINATION AND RENEWAL

24. AMENDMENT

- 24.1 The Authority shall be entitled after a hearing with the Licensee and the provision of written reasons to amend the Licence conditions provided that -

- a) no amendment may be made by the Authority unless the amendments are necessary for the fulfilment of the Authority's duties and do not unduly prejudice the Licensee or the Licensee's business or affect any rights or authorisations granted hereunder; or
- b) such amendments are to be specifically agreed with the Licensee in writing unless decreed by law or regulation and such law or regulation is applicable to all similarly licensed operators or providers.

25. EFFECT OF TERMINATION

- 25.1 Within a period of 90 days of the date of termination of the Licence, the Authority may by notice in writing to the Licensee or its successor in title, elect to acquire the Licensed Lines of the Licensee or any portion thereof. In return for such assets the Authority shall pay to the Licensee or its successor in title compensation in an amount as follows:

- a) in the event of termination for reasons other than the reasons giving rise to a termination referred to in subparagraph (b) hereunder, the greater of the fair market value of all such Licensed Lines or the fair market value of the complete cellular business or the Licensee as a going concern including all liabilities; or
- b) the lesser of the values referred to in subparagraph (a) above in the event of a termination pursuant to a voluntary liquidation referred to in paragraph 26.2(b) or a deregistration referred to in paragraph 26.2(d).

as valued by reference to such values immediately prior to the termination and disregarding whether any termination has taken or may take effect by an independent valuator acceptable to the Licensee and the Authority, experienced in the field of valuation of businesses of the same kind as that of the Licensee.

26. REVOCATION

- 26.1 The Authority may, after having satisfied itself and with the approval of the Minister, for such reasons as given in writing, revoke this Licence by not less than 60 days written notice to the Licensee if any amount payable in terms of paragraph 4.1 of this Licence remains unpaid for a further period of 14 days after having been notified in writing thereof by the Authority and the Licensee fails to remedy such default within 30 (thirty) days after receipt of a notice in writing from the Authority describing such default and requiring that it be remedied.
- 26.2 The Authority may, otherwise than is provided for in paragraph 26.1, and with the approval of the Minister, revoke this Licence by written notice to the Licensee only in the following circumstances:
- a) Where the Licensee agrees in writing to such cancellation;
 - b) if the Licensee is placed in liquidation, whether voluntary or compulsory or is placed under judicial management, either provisionally or finally;
 - c) a breach of paragraph 5 where prior written approval of the Authority had not been obtained;
 - d) if the Licensee takes steps to deregister itself or is deregistered;
 - e) a failure on the part of the Licensee to meet its obligations in terms of paragraphs 11.1, 11.2, 12.1 and 22.1.

27. PERFORMANCE GUARANTEE

- 27.1 The Licensee shall procure a performance guarantee to the satisfaction of the Authority underwriting the performance obligations of the Licensee in terms of this Licence.
- 27.2 The Licensee shall provide the bond defined within ten (10) days of written notification of the successful Licence award.
- 27.3 The performance bond shall be valid for a period of ten (10) years. It may be reduced at an earlier date after the fifth (5th) year of the date of issue of the Licence upon agreement with the Authority provided that coverage obligations are fulfilled.
- 27.4 Revocation of the grant of license results in the full loss of the definitive bond provided.
- 27.5 The Licensee shall, if it fails without reasonable cause so to construct, maintain and use any Licensed Line in any particular place as required in terms of paragraphs 11.1 and 11.2, pay to the Authority, in respect of any month or part of a month commencing on the day when either -
- a) a Licensed Line ought to have been constructed, maintained and used as required; or
 - b) the Authority notifies the Licensee, supported by its written reasons, that insufficient Licensed Lines have been constructed, maintained and used as required in terms of paragraphs 11.1 and 11.2,

and ending on the day when the Authority is informed by such Licensee that the Licensed Line has been constructed, maintained and used as so required, a sum equal to one tenth of the estimated cost of installing the Licensed Line in that place up to 100% of such costs, such payments to be made monthly in arrears on the first business day of the month.

PART EIGHT - GENERAL

28. FORCE MAJEURE

28.1 Should the Licensee be prevented from performing its obligations in terms of this Licence on account of any event as set out hereunder, the Licensee shall not be regarded as being in breach of the terms of this Licence and shall not be held liable on account thereof.

28.2 For the purposes of this paragraph an event shall mean any legislation or regulation of the Republic of Namibia, fire, Act of God, accident, explosion, acts of war, terrorism, insurrection, sabotage, labour disputes, transportation embargo, act or omission of any government or government agency, failure in performance of any supplier as a result of any of the above, all of which are beyond the control of the Licensee.

28.3 The Licensee shall advise the Authority as soon as practicable after becoming aware of the existence of any such event or circumstances likely to lead to such an event.

29. EXERCISE OF POWERS

29.1 In exercising any power granted to the Authority in terms of this Licence the Authority shall –

- a) act reasonably having regard to all surrounding circumstances;
- b) prior to exercising such power afford the Licensee every reasonable opportunity to make representations to the Authority in respect of all relevant issues; and
- c) at the request of the Licensee furnish written reasons for any decision so made.

30. RECORDS

30.1 The Licensee shall, within 30 (thirty) days of the date of request by the Authority, provide the Authority with such information or access to such information as may be reasonably necessary to verify the compliance of the Network and the services provided by the Licensee with the quality standards set forth in this Licence.

ANNEXURE A: COVERAGE AND ROLLOUT TIMETABLE**1. Geographical Coverage**

Region	BTS Site	Year of Rollout	
Caprivi	Katima Mulilo North	1	
	Katima Mulilo South	1	
	Kongola	1	
	Bukalo	5	
	Kanono	5	
	Ngoma	4	
	Erongo	Arandis	1
Henties Bay		1	
Karibib		1	
Omaruru		1	
Swakopmund Industrial		1	
Swakopmund Tamariskia		1	
Usakos		1	
Walvis Bay Dias Circle		1	
Walvis Bay Esplanade		1	
Walvis Bay Kuisebmond		1	
Hardap		Aranos	1
	Gibeon	1	
	Kalkrand	1	
	Maltahohe	1	
	Mariental	1	
	Rehoboth	1	
	Stampriet	1	
	Gochas	1	
	Karas	Ariamsvlei	1
Grunau		1	
Karasburg		1	
Keetmanshoop		1	
Lüderitz		1	
Noordoewer		1	
Oranjemund		1	
Rosh Pinah		1	
Aus		1	
Bethanie		1	
Skorpion		1	
Kavango		Divundu	1
		Nkurenkuru	1
	Rundu	1	
	Rundu South	1	
	Rundu East	1	
	Rundu Mid	1	
	Rundu Mid West	1	
	Rundu Rural Centre	1	
	Rundu Rural North	1	
	Rundu Rural South	1	
	Rundu Rural T0803	1	
	Rundu Rural West	1	
	Rundu South West	1	

Region	BTS Site	Year of Rollout
	Rundu West	1
	Biro	1
	Kankongo	1
Khomas	Windhoek CBD Centre	1
	Windhoek CBD North	1
	Windhoek CDB Centre	1
	Hakahana	1
	Auasblick Hilltop	1
	Hochland Park	1
	Katutura	1
	Khomasdal	1
	Olympia	1
	Otjomuise	1
	Pioneerspark	1
	Prosperita	1
	Wanaheda	1
	Windhoek North	1
	Windhoek International Airport	1
Kunene	Kamanjab	1
	Khorixas	1
	Opuwo	1
	Outjo	1
	Ruacana/Oshifo	1
Ohangwena	Eenhana	1
	Ohangwena/Okatope	1
	Oshikango/Engela	1
	Okongo	1
Omaheke	Buitepos	1
	Gobabis	1
Omusati	Ogongo	1
	Okahao	1
	Okalongo	1
	Onesi	1
	Oshikuku	1
	Outapi	1
	Tsandi	1
Oshana	Ondangwa East	1
	Ondangwa West	1
	Ongwediva	1
	Oshakati	1
Oshikoto	Onathing/Onayena	1
	Oshigambo	1
	Oshivelo	1
	Tsumeb	1
	Halali	1
	Namutoni	1
	Okaukuejo	1

Region	BTS Site	Year of Rollout
Otjozondjupa	Grootfontein North	1
	Grootfontein South	1
	Okahandja North	1
	Okahandja South	1
	Okakarara	1
	Otavi	1
	Otjiwarongo	1
	Kombat	1

2. Road Coverage

BTS Site	Year of Rollout
Tsumis B1 South	4
B1 South 2	4
Asab B1 South	4
Heirachabis B3 East	4
Ariamsvlei Border	4
Groot Aub B1 South	4
Tses B1 South	5
B1 South 10	5
Duineveld B1 South	4
B1 South 8	4
Aris B1 South	4
Mubiza B8 North	4
Kumwe B8 North	5
Olupanda	2
Mahenene C46 North	3
B8 North 1	4
B8 North 2	4
B8 North 8	5
B8 North 7	5
Kongola B8 North	5
Sibbinda B8 North	5
Sachinga B8 North	5
Kasheshe B8 North	5
Mungunda	5
Namu B8 North	5
Nvondo B8 North	5
Katere B8 North	5
Shingyungwe B8 North	5
Epalala B1 North	2
Okaku B1 North	2
Ongenga	2
B1 North 14	3
B1 North 16	3
B1 North 10	4
B1 North 11	4
B1 North 12	3
B1 North 13	4
B1 North 15	4
B1 North 17	4

BTS Site	Year of Rollout
Sam Nujoma Road	1
Sam Nujoma Road 2	1
Sam Nujoma Road 3	1
B6 East 2	2
Witvlei B6 East	2
B6 East 6	2
B6 East 1	3
B6 East 3	3
B6 East 4	3
B6 East 5	3
B6 East 7	3
Wilhelmstal B2 West	3
Cameron B2 West	3
B2 West 4	3
B2 West 6	3
131 North 1	3
B2 West 3	2
B2 West 5	3
B2 West 1	3
B1 North 4	1
B1 North 2	2
B2 West 2	2
B1 North 9	3
B1 North 4a	4
B1 North 7	4
B1 North 3	4
B1 North 5	4
B1 North 6	4
B1 North 8	4
B1 South 1	6
B1 South 3	6
B1 South 4	6
Narubis B1 South	6
B1 South 11	6
B1 South 7	6
B3 East 1	6
B3 east 2	6
B3 East 3	6
B8 North 3	6
B8 North 5	6

3. Population Coverage

Region	Population (as per 2001 Census)	Population covered after 5 years	% Population covered after 10 years
Caprivi	79852	20	32
Erongo	107629	60	82
Hardap	67998	70	71
Karas	69677	70	70

Region	Population (as per 2001 Census)	Population covered after 5 years	% Population covered after 10 years
Kavango	201093	30	46
Khomas	250305	80	94
Kunene	68224	25	37
Ohangwena	227728	60	68
Omaheke	67496	25	27
Omusati	228364	50	86
Oshana	161977	40	80
Oshikoto	160788	30	55
Otjozondjupa	135723	55	69
Total	1826854	36	68
